GOVERNMENT OF MAHARASHTRA

No. 467 /E/Notary
Law and Judiciary Department,
Mantralaya, Mumbai-400 032.
Dated the 2 January 2002.

From:

Shri J.R. Deshpande,
Joint Secretary and
Competent Authority.

To:

Subject :- Circulation of Government Circular, Law and Judiciary Department, No. 467/E dated the 18th December 2001, carrying the procedure, rules to be followed by all the Notaries in the State, appointed by the Government of Maharashtra.

Sir/Madam,

With reference to the above subject, as per the directions of the Honourable High Court the Government Circular, Law and Judiciary Department, No. 467/E dated the 18th December 2001; throwing the light on the procedure and rules, to be followed by the Notaries appointed by the Government of Maharashtra, is being issued.

The copy of the said Government Circular is annexed hereto for your information and necessary action.

You are, therefore, requested to follow the directions / instructions / procedure / rules and the guidelines given in the said Circular scrupulously. If you fail to comply any of those directions / instructions / procedure / rules and guidelines, then your Certificate of Practice shall stand suspended/ revoked /or cancelled, which you may please note.

Yours faithfully,

(J.R.Deshpande)
Joint Secretary and Competent Authority
to Government of Maharashtra.

Encl. As above.

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Notaries Act, 1952 and Notaries Rules, 1956
Substituted by Notaries (Amendment) Act, 1999 and substituted by Notaries (Amendment)Rules, 2000.
Complaints of professional misconduct, not performing the duties as Notaries, in the State of Maharashtra.

GOVERNMENT OF MAHARASHTRA
Law and Judiciary Department,
Circular No. 467/E/Notary,
Mantralaya, Mumbai-400 032, dated the 18th December, 2001.

CIRCULAR

Government of Maharashtra has received several complaints from the public at large regarding the professional misconduct, non- performance of functions and duties as Notaries Public appointed by this Government. On perusal of such complaints it is noticed that the general nature of such complaints is as follows:-

(i) Ante-dating the attestation of documents;
(ii) Attesting affidavits in the absence of its executants or deponents, and authenticating the instruments, without verifying the identity of person coming for attestation and the fact of execution;
(iii) Certifying forged documents without verifying as to the identity of persons coming for certification/verification and attestation of the documents and so on;
(iv) Non-compliance of provisions of Notaries Act, 1952 and Notaries Rules, 1956;
(v) Non-compliance of the provisions of the Bombay Stamps Act and Indian Stamps Act;

In this connection attention of all notaries public is invited to section 8 of the Notaries Act, 1952, which contemplates functions of Notaries.

1. Affirmation of the documents. – The Notary Public appointed under section 3 of the Notaries Act, 1952, is empowered to administer oath, for the

purposes of Affidavits under section 137 of the Code of Civil Procedure and, therefore, they should not administer oath for the purpose of Affidavit which do not come within the scope of the Code of Civil Procedure. However the Notary Public are empowered to administer oath for the purposes of affidavit to be filed in the District Courts the Courts subordinate to the District Court and Revenue Courts. While administering oath or attesting execution of any document a Notary shall indicate as to what steps the Notary had taken for identification of the deponent or executant. Notary Public shall administer oath/affirmation to the deponent/to the person whose affidavit/document is to be attested. The attestation shall be in the following form :-

Attestation of affidavit. –

I do swear in the name of God / Solemnly affirm that this is my name and signature (or mark) and that the contents of this my affidavit are true.

Signature of Notary.

Signature of Deponent after the attestation.

Signature of Notary
Red seal of Notary.

The every Notary is authorised to receive affidavits and an affidavit sworn, before a Notary, is admissible in evidence in Civil Courts. Similarly a power of Attorney bearing the authentication of Notary public is taken, as sufficient evidence on the instrument by the person who appears to be the executant on the face of it. The affidavit or any document attested by Notary is to be signed on each page, under his/her signature and affix red seal on each page. The last page of the Affidavit/document shall carry the form of the attestation given hereinabove. The Notary shall take steps to maintain continuity of pages in case the document is multi page document.

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2. **Functions of Notaries:-** (i) A Notary may do all or any of the acts by virtue of his office. In this connection, attention of the notaries public is invited to section 8 of the Notaries Act, 1952, which specifies, inter alia, the functions of notaries.

(ii) No act specified in sub-section (1) of section 8 of the Notaries Act, 1952 shall be deemed to be a notarial act except when it is done by a notary under his signature and official red seal and the same is registered in the register to be maintained by the Notary under rule 11(2) of the Notaries Rules, 1956.

(iii) The Notary shall make endorsements on the document Notarised by the Notary in such manner so to make clear as to which act of the Functions of Notary under section 8 of the Act, are performed by the Notary.

3. The Notary Public shall endeavor to charge the fees as per the rates mentioned below. Failure to which, the Government shall initiate the proceeding suo motu for the cancellation of the certificates, of the Notary and in that case the Notary shall be liable to be debarred from practicing as a Notary.

Fees payable to a notary for doing any notarial act- ((1) Every notary may charge fees not exceeding the rates mentioned below, namely,-

(a) for noting an instrument-

if the amount of the instrument does not exceed rupees 10,000	-Rs.35/-
if it exceeds rupees 10,000 but does not exceed rupees 25,000	-Rs.75/-
if it exceeds rupees 25,000 but does not exceed rupees 50,000	-Rs.110/-
if it exceeds rupees 50,000	-Rs.150/-

(b) for protesting an instrument-

if the amount of the instrument does not exceed rupees 10,000	-Rs.35/-
if it exceeds rupees 10,000 but does not exceed rupees 25,000	-Rs.75/-
if it exceeds rupees 25,000 but does not exceed rupees 1,00,000	-Rs.110/-
if it exceeds rupees 1,00,000	-Rs.150/-

(c) for recording a declaration of payment for honour -Rs.75/-

(d) duplicate protests -half the charge for original

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(e)	for verifying, authenticating, certifying or attesting the execution of any instrument	-Rs.15/-
(f)	for presenting any promissory note, hundi or bill of exchange for acceptance or payment or demanding better security	-Rs.35/-
(g)	for administering oath to, or taking affidavit from any person	-Rs.15/-
(h)	for preparing any instrument intended to take effect in any country or place outside India in such form and language as may confirm to the law of the place where such deed is intended to operate	-Rs.150/-
(i)	for attesting or authenticating any instrument to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate	-Rs.150/-
(j)	for translating and verifying the translation of any document from one language to another	-Rs.75/-
(k)	for noting and drawing up ship's protest, protest or relating to demurrage and other commercial matters.	-Rs.150/-
(l)	for certifying copies of document as true copies of the original per page	-Rs.5/- per page minimum Rs.10/-
(m)	for any other notarial act	such sum as the appropriate government may fix from time to time.

(2) The rates of fees to be charged by a notary shall be displayed by him in conspicuous place inside as well as outside his chamber or office.

(3) In addition to the above fees, a notary may charge the travelling allowance by road or any rail at the rate of rupees five per kilometre.

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4. <u>Transaction of business by a notary. -</u> (1) A notary in transacting the business under the Act shall use the forms set forth in the Appendix to Notaries Rules, 1956.

(2) Besides recording declaration of payment for honour a notary shall also register noting and protest made. Every notary shall maintain a notarial register in the prescribed Form XV.

(3) Where any demand of acceptance or payment or better security has been made by a clerk, a notary shall, after examination of the entry in the register relating to such demand, affix his signature thereto, and cause the clerk to affix his signature also to the entry.

(4) The Notary shall satisfy himself regarding affixation of proper stamp duty before any document is Notarised.

(5) The Notary shall take all possible care to detect thesubsequent changes or tampering with the Document, if there be any.

(6) Each notary shall, before bringing the notarial register into use, add a certificate on the title page and last page specifying the number of pages, it contains. Such certificate shall be signed with dated by the notary. Each page of Register shall carry Red Seal of Notary.

(7) On every document Notarised by a Notary by virtue of the powers under Section 8 of the Notaries Act 1952, the Notary shall indicate the number in the Register maintained by Notary at which the said document is Notarised.

(8) The person interested shall be entitled for certified copy of the entry made in the notarial register on payment of Rs. 5/- per each entry. On receipt of application along with copying charges, the Notary shall issue certified copy under his seal and signature within 3 days and shall issue receipt evidencing receipt of copying charges.

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(9) Every notary shall permit the District Judge or such officer as the appropriate government from time to time appoints, in this behalf to inspect his register at such times, not other than twice a year, as the District Judge or officer may fix. District Judge or officer appointed by the State Government will have power to lodge a report to the appropriate government for taking action against a notary. The District Judge shall call for the register maintained by the notary in Form XV, for inspection at such times not other than twice a year as the District Judge may fix. The District Judge shall have the power to lodge a report to the appropriate Government for taking action against the notary. The report of the District Judge shall be final/conclusive in that behalf.

President of Bar Association of a District /Taluka places, in the State finds a notary is sitting at other places, otherwise than notified in his certificate and if he finds that notary is working his office, contrary to the provision of Notary Act and Notary Rules, he shall submit a detail report, in writing to District Judge and District Judge shall hold an inquiry in the matter and submit his report to Competent Authority of State Government.

(10) When the original instrument is in a language other than English any noting or protest or entry in his register which has to be made in respect of the instrument by a notary may be made either in that language or in English.

(11) In making presentment of bills or notes a notary shall observe the provisions of Chapter V of the Negotiable Instruments Act, 1881 (XXVI of 1881).

(12) The notary may –

(i) draw, attest or certify documents under his official seal including conveyance of properties;

(ii) note and certify the general transactions relating to negotiable instruments;

(iii) prepare a will or other testamentary documents; and

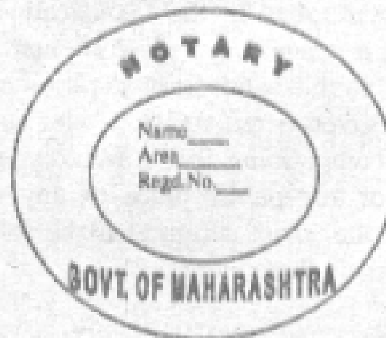
(iv) prepare and take affidavits for various purposes for his notarial acts.

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(13) Every notary shall grant a receipt for the fees and charges realise by him and maintain a register showing all the fees and charges realised.

(14) Every notary shall use a plain circular red seal of a diameter of 5 cm. as indicated by a drawing given below, bearing his name, the name of the areas within which he has been appointed to exercise his functions, the registration number and the circumscription "NOTARY", and the name of the government, which appointed him.



5. **Renewal of licence to practice. -** The Notary is supposed to renew certificate of practice as required under clause (b) of sub-section (2) of section 5 of the Notaries Act, 1952. The Notary who desires to continue the practice after the expiry of the period mentioned in the certificate may apply to the Government, under the guidelines mentioned below.

(a) The Notary public appointed by the Government of Maharashtra, if desires, to continue the practice after expiry of the period mentioned in the certificate, may apply for renewal of certificate along with the prescribed fee of Rs. 500/- (Rupees five hundred), and along with his Notarial register for inspection, before competent authority, one month prior to the date of expiry of the certificate of practice. If the application is not received for renewal of certificate along with Rs. 500/- (Rupees five hundred only) along with Notarial register within the stipulated period, as stated here in above, the Government may not consider the renewal of licence if the Notarial register is not found up to date and/or Act or Rules, the Competent Authority may hold a necessary inquiry before renewing licence.

(b) It is also noticed by the Government that some of the Notaries, continue with the notary practice even after the expiry of the period mentioned in the certificate. Therefore it is necessary to issue the directions that a Notary should apply to the Government for renewal of his/her certificate, one month prior to expiry of period. The Notary Public is continues with the practice, after the expiry period of the certificate then the Competent

Authority shall hold an enquiry and the Authority on its satisfaction, may debar the Notary from the Notary practice.

(c) Subject to the provisions of section 9 of the Notaries Act, 1952 no person shall practice as a Notary or do any Notarial act under the official seal of a Notary unless he holds a certificate of practice, in force issued to him under section 5 of the Notaries Act, 1952.

(d) If any inquiry regarding professional misconduct pending against Notary Public before competent authority, Government of Maharashtra, under such circumstances, application for renewal of certificate of the Notary will not be considered till the final disposal of the enquiry.

(e) Under the provisions of rule 15 of the Notaries Rules, 1956, each Notary shall have an office within the area mentioned in the Certificate issued to him/her under rule 8 or he/she shall exhibit it in a conspicuous place thereat a board showing his/her name and designation as a Notary. In this connection attention of all Notaries of the entire State are invited on the direction given hereinabove. Under such circumstances if any complaint received by the public complaining that a notary public practicing as a Notary in the premises of the Court or any public place or anywhere otherwise that place of area mentioned in the certificate, strict action shall be followed under the provisions of the Notaries Act, and rules made thereunder.

In view of the instructions mentioned, hereinabove, in the said Circular, all Notaries appointed by the Government of Maharashtra for entire State are hereby informed/directed that the Notaries shall follow the provisions of Notaries Act and Rules made thereunder the procedure/guidelines framed under this Circular/guidelines, failure to which strict action shall be taken against notary under the provisions of Notaries Act and the rules made thereunder by this Government. If any of the notary public contravenes the directions issued in this Circular/guidelines, then in that case the Government shall initiate suo motu proceedings, for the cancellation of the certificates of the Notary.

By order and in the name of the
Governor of Maharashtra,

18/12/2001
(J.R. Deshpande)
Solicitor-cum-Joint Secretary and
Competent Authority to Government.

To,

All concerned & Notaries appointed by Government of Maharashtra.

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